

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF DELAWARE**

ABBOTT LABORATORIES, an Illinois
corporation,

Plaintiff,

v.

BANNER PHARMACAPS, INC., a Delaware
corporation,

Defendant.

Civil Action No. 07-CV-00754-GMS

MOTION FOR VOLUNTARY DISMISSAL, WITH PREJUDICE

Plaintiff, Abbott Laboratories, hereby moves for voluntary dismissal of all claims in its complaint, with prejudice, pursuant to Fed. R. Civ. P. 41(a)(2). In support of this motion, Abbott states as follows:

1. The two patents at issue in this case, U.S. Patent Nos. 4,988,731 and 5,212,326 (collectively, the “patents”), expired on January 29, 2008. (*See* Compl. (D.I. 1), Ex. A & B.)

2. Because the patents have expired, Abbott believes it is appropriate to voluntarily dismiss all of its claims against Banner in this case.

4. Abbott requested that Banner consent to a stipulation of dismissal that would dispose of all claims and counterclaims in this action, but Banner has refused.

5. Banner has asserted two counterclaims against Abbott. (*See* Answer (D.I. 7).) Banner’s first counterclaim merely seeks a declaratory judgment of non-infringement of the patents. (*See id.*) This counterclaim is unquestionably moot, given the expiry of the patents, and Abbott will separately move to dismiss it. Banner’s second counterclaim purports to allege a claim against Abbott for unfair competition. (*Id.*) Abbott previously moved to dismiss that

counterclaim because it is deficient as a matter of law. (*See generally* Motion to Dismiss (D.I.11).) That motion is pending.

7. Banner will not be prejudiced by the entry of a dismissal with prejudice of Abbott's claims.

For all of these reasons, Abbott respectfully moves the Court to enter an order dismissing, with prejudice, of Abbott's claims against Banner in this action, with each party to bear its own costs, fees, and disbursements.

Dated: July 28, 2008

Respectfully submitted,

CONNOLLY BOVE LODGE & HUTZ LLP

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CERTIFICATE OF SERVICE

I hereby certify that, on July 28, 2008, a true and correct copy of the foregoing document, entitled **Motion for Voluntary Dismissal, With Prejudice** was served on the following persons via the following methods:

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